

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4026 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.R.JAIN Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KUVARBEN WD/O GOTTORBHAI AMARSIBHAI

Versus

VIPUL MITRA

Appearance:

MR KIRIT I PATEL for Petitioners
SERVED BY DS for Respondent No. 1
MR VIJAY H PATEL for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.R.JAIN

Date of decision: 23/07/96

ORAL JUDGEMENT (Per Patel, J.)

Petitioners have challenged the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") and the award made under the Act.

2. Submissions are made on the following two grounds:-

(i). Personal notice which is required to be given under Rule 1 of the Bombay Land Acquisition Rules read with Section 4 of the Act is not given and thereby opportunity of making representation is lost and hence award is made in violation of principles of natural justice.

(ii) Notification under Section 6 is not published within the stipulated period of one year and therefore, it is bad.

3. Looking to the language of Section 4, the notification is required to be published in the manner provided therein and it is not the case that it is not so published. Sub-section (1) of Section 4 reads as under:-

"4. Publication of preliminary notification and powers of officers there upon. (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, or for a Company, a notification to that effect shall be published in the official Gazette, and in two daily newspapers circulating in that locality of which atleast one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of the publication of the notification."

Thus, it is clear that there is nothing to indicate that personal notice is required to be given.

4. There are rules framed under Section 55 of the Act, which is known as the Bombay Land Acquisition Rules (hereinafter referred to as the Rules. According to learned advocate for the petitioner, reading the language of rule 1, it must be interpreted that personal notice must be given to every interested persons. Mr. Patel, learned Advocate, relying on the decision of this Court in the case of KANTIBHAI NATHABHAI PATEL VS. STATE OF GUJARAT reported in 37 (2) GLR 299 submitted that as petitioners were not served with notice as contemplated under Rule 1 of the Rules, the impugned notification must be quashed. In the head note of the reported text of the judgment, it is printed as under :-

"Land Acquisition Act, 1894 (I of 94) - Secs. 4

& 5 - Bombay Land Acquisition Rules, 1926 - Rule 1 - Compliance with all requirements of sec 4 including publication in the locality where the lands are situated and service of notice on the holders of lands as laid down in Rule 1 is absolutely necessary - Non-compliance therewith vitiates the proceedings - Proceedings quashed."

Reading the head note, learned Advocate submitted that in the instant case also, no service is effected as per Rule 1 and hence this petition is required to be allowed.

We put a question to point out the aforesaid part from the text of the judgment.

5. In paragraph 4 of the aforesaid judgment, after quoting Section 4, Court has observed:-

"Thus, reading this Section, it is very clear that mere publication of notification in the official gazette and in two daily newspapers circulating in that locality itself is not sufficient but the Collector shall have to also cause public notice of the substance of such notification at the convenient places in the said locality."

There is a reference to statements made in the petition with regard to not publishing notification at the convenient places in the locality and not serving the petitioners with notice under Rule 1 of the Rules and, further, the respondent having not denied these averments. In paragraph 5 of the said judgment, the Court has specifically referred that the notification was not published as required under Section 4, i.e., over and above publishing the notification in the gazette and newspapers, its substance was not published in the convenient places in the locality. This Court has held that the proceedings should be quashed as the substance of the notification was not published in the locality. This Court has nowhere said that the proceedings should be quashed because the petitioners were not served with notice under Rule 1 of the Rules. Thus, learned Advocate is not right in making submissions relying on the head note only. From the judgment, he could not point out that the Court has held that over and above the manner indicated in Sec. 4 of the Act for publication of notice, it must be served on the claimant personally. Hence, this submission is not well founded.

The aforesaid headnote is not reproducing the law laid down by this Court.

7. The Apex Court, in the case of STATE OF GUJARAT VS. PANCH OF NANI HAMAM'S POLE reported in AIR 1986 SC 803, has held as under:-

"Section 4(1) quoted above indicates the manner in which a notice will be given to the parties interested. And that is by getting a public notice having the substance of the notification given at a convenient place in the said locality. Therefore, what Rule 1 contemplates is a notice to the interested parties as required under Section 4(1) and Section 4(1) requires the notice to be notified at a convenient place in the said locality for information of the interested parties. It is, therefore, clear that by reading Section 4(1) with Rule 1 it could not be interpreted to mean that a personal notice to each and every interested person is the requirement of Section 4 and in absence of such a notice, the proceedings of acquisition will be invalidated. The High Court in the impugned judgment placing reliance on Ashokkumar Gordhanbhai vs. State of Gujarat (1969 (10) GUJ LR 503) (supra) came to the conclusion that as such an individual notice was not served in the present case, the proceedings of acquisition are bad in law. As discussed earlier, reading of Section 4(1) with Rule 1 does not provide for an individual notice but only requires a notice as contemplated under Section 4(1) to the interested persons. The manner in which the notice is to be given is provided in Section 4(1) itself by publication of the substance of the notification at a convenient place in the locality. It is not in dispute that such a procedure was followed and, therefore, it could not be said that the notice as contemplated under Section 4(1) read with Rule 1 was not given to parties interested and, therefore, it could not be held that the proceedings of acquisition are bad in law. "

8. Thus, it is clear that it is not necessary to give personal notice to each and every interested person. The manner in which the notice is to be given as provided in Section 4(1) of the Act is by way of publication, and if it is done, sufficient opportunity is given. Hence we

do not find any merit in the contention.

9. The applicants in further-affidavit have mentioned the dates. It appears that the notification under Section 4 was published on 7th May, 1990 in local daily "Jansatta" in regional language and on 14th May 1990 in Western Times. It is also stated that the substance of notification u/s 4 was notified at village Mithapur on 25th May 1990. The notification under Section 6 is dated 15th May 1991 and thus notification under Section 6 is issued within a period of one year. In view of this, no grievance can be made. Learned advocate has referred to other dates. Suffice it to say that in view of the fact that notification is published within a period of one year, there is no merit in this contention. Section 4 itself provides that date of publication of notification will be the last of the dates of such publication. On 1.6.1990, notification has been published at the Gram Panchayat, Mithapur and on 6.6.90 the same was published at the office of the Mamlatdar, Dholka. Even if we accept the date as stated by the petitioners that at Gram Panchayat notification u/s 4 was published on 25.5.90, the contention has no merits as notification under Section 6 has been published on 16.5.91. Thus, within one year from the last date of publication of notification under Section 4, notification under Section 6 has been published. Therefore, the contention of the petitioners is without any merits.

In the result, this petition is required to be rejected, and is rejected. Notice is discharged. No order as to costs.

csm./